

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

GERALD A. FAST, *et al.*,)
)
)
Plaintiffs-Appellees,) No. 10-1725
)
v.)
)
)
APPLEBEE'S INTERNATIONAL,)
INC.,)
)
)
Defendant-Appellant.)

**MOTION BY THE NATIONAL RESTAURANT ASSOCIATION FOR
LEAVE TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF
APPELLANT, APPLEBEE'S INTERNATIONAL, INC., AND FOR
EXTENSION OF TIME**

The National Restaurant Association ("NRA") respectfully moves the Court, pursuant to Federal Rules of Appellate Procedure ("FRAP") 26 and 29, for leave to file the accompanying *amicus curiae* brief in support of Appellant, Applebee's International, Inc., and for an extension of time to September 15, 2010 to do so. For the following reasons, NRA respectfully requests that this motion be granted and the filing of the NRA *amicus curiae* brief be permitted.

NRA, a not-for-profit corporation organized under Illinois not-for-profit law, is the largest United States trade association representing the

restaurant industry. NRA is also affiliated through contracts with independent state restaurant associations to share membership and provide services in virtually every state. NRA members include and represent every type of restaurant in the United States, including multi-unit chain operators, franchisors and franchisees, quick service restaurants, as well as fine-dining and casual dining (table service) restaurants. Together, some 37,000 NRA members operate over 380,000 restaurant places in the United States.

The primary issue on interlocutory appeal that NRA seeks to address is whether the district court committed reversible error in giving deference to a United States Department of Labor (“DOL”) internal interpretive guideline restricting the statutory right of employers to take a tip credit for tipped employees engaged in tipped occupations, even when the statutory standards have been met under Section 3 (t) and (m) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. 203 (t) and (m). NRA’s *amicus curiae* brief will assist the Court in its consideration of this issue in the context of the widespread impact the ruling will likely have on the restaurant industry.

NRA did not become aware of the grant of the interlocutory appeal and the time schedule to file an *amicus* brief until August 13, 2010. The Court has approved an extension to file *amicus curiae* briefs to September 15, 2010 for the U.S. Department of Labor and the National Employment

Lawyers Association. Granting NRA's request will not delay the briefing schedule.

Accordingly, the National Restaurant Association respectfully moves the Court to grant this Motion to file an *amicus curiae* brief in support of Appellant, on or before September 15, 2010.¹

Respectfully submitted,

NATIONAL RESTAURANT ASSOCIATION

by: /s/ Peter G. Kilgore

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¹ NRA has received the consent of Appellant, Applebee's International, Inc., to file an *amicus curiae* brief, and a request for consent from Appellee's counsel has been made. However, as of the date of the filing of this motion, no response from Appellee's counsel has been received.

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2010, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I further certify that the original was signed and retained by me in accordance with 8th Cir. R. 25A. A copy of the foregoing shall be served via the CM/ECF system on all participants in the case who are registered CM/ECF users, and by the undersigned via U.S. Mail, on this date, on any of the following who are non-CM/ECF participants.

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